

This Opinion is Not a  
Precedent of the TTAB

Mailed: November 10, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Argo AI, LLC*  
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Serial No. 88814288  
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David V. Radack and Jenna P. Torres of Eckert Seamans Cherin & Mellott LLC,  
for Argo AI, LLC.

Grace Duffin, Trademark Examining Attorney, Law Office 120,  
David Miller, Managing Attorney.

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Before Zervas, Kuczma, and Larkin,  
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Argo AI, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark GROUND TRUTH for “On-line journals, namely, blogs featuring autonomous vehicle technology” in International Class 41.<sup>1</sup>

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that it

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<sup>1</sup> Application Serial No. 88814288 was filed on February 28, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce in connection with the services identified in the application.

so resembles the standard character mark GROUNDTRUTH registered on the Principal Register for various services, including “On-line journals, namely, blogs featuring information written by and for members of local communities around the globe” in International Class 41,<sup>2</sup> as to be likely, when used in connection with the services identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which was denied. The case has been fully briefed.<sup>3</sup> We affirm the refusal to register.

#### **I. Record on Appeal and Evidentiary Issue<sup>4</sup>**

The record on appeal includes USPTO electronic records regarding the cited registration;<sup>5</sup> pages from the website of the owner of the cited registration (the “Registrant”);<sup>6</sup> Wikipedia entries entitled “Community Development”<sup>7</sup> and “Ground

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<sup>2</sup> The cited Registration No. 4496918 issued on March 18, 2014 and has been maintained. The registration covers other services that are not cited by the Examining Attorney in support of the refusal to register.

<sup>3</sup> Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s appeal brief appears at 6 TTABVUE and its reply brief appears at 9 TTABVUE. The Examining Attorney’s brief appears at 8 TTABVUE.

<sup>4</sup> Citations in this opinion to the application record, including the request for reconsideration and its denial, are to pages in the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”).

<sup>5</sup> May 20, 2020 Office Action at TSDR 2-4.

<sup>6</sup> August 25, 2020 Response to Office Action at TSDR 7-11.

<sup>7</sup> *Id.* at TSDR 12-25.

truth;”<sup>8</sup> third-party webpages regarding community development;<sup>9</sup> USPTO electronic records regarding third-party registrations of GROUND TRUTH and GROUNDTRUTH marks for various goods and services;<sup>10</sup> and webpages displaying the use of GROUND TRUTH and GROUNDTRUTH for various services.<sup>11</sup>

Applicant also attached materials to both its appeal brief and its reply brief. Applicant attached to its appeal brief what it describes as a “definition of autonomous vehicles,” 6 TTABVUE 11, in the form of an entry for the term “autonomous vehicles” on the website at technopedia.com. *Id.* at 16-26. The Examining Attorney acknowledges that the “Board may take judicial notice of dictionary definitions that (1) are available in a printed format, (2) are the electronic equivalent of a print reference work, or (3) have regular fixed editions,” 8 TTABVUE 4, but objects to the attachment to Applicant’s appeal brief on the grounds that it is untimely and that “the definition evidence that applicant seeks to introduce does not meet this standard because the definition does not appear to be in print form, does not appear to be the equivalent of a print reference work, or appear to have regular fixed editions.” *Id.*

In its reply brief, Applicant argues that the Examining Attorney’s objection is unwarranted because “technopedia.com has a regular, fixed dictionary of technology terms that is generated and updated by the site’s authors, not by readers or anonymous sources.” 9 TTABVUE 5. Applicant also “attaches as Exhibit A to this

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<sup>8</sup> *Id.* at TSDR 26-30.

<sup>9</sup> March 12, 2021 Request for Reconsideration at TSDR 5-24.

<sup>10</sup> August 25, 2020 Response to Office Action at TSDR 31-47.

<sup>11</sup> *Id.* at TSDR 48-72.

reply brief a dictionary definition of ‘autonomous’ from the online version of the Cambridge Dictionary” and “asks that the Board take judicial notice of the definition of autonomous.” *Id.* (citing *In re Jimmy Moore LLC*, 119 USPQ2d 1764, 1768 (TTAB 2016)). In *Jimmy Moore*, the Board took judicial notice of dictionary definitions attached to an appeal brief after determining that they were “taken from appropriate sources.” *Id.* We need not address the Examining Attorney’s objection to the technopedia.com webpages because we find that the CAMBRIDGE DICTIONARY is an appropriate source from which to take judicial notice, and we grant Applicant’s request that we judicially notice the definition of “autonomous” from the CAMBRIDGE DICTIONARY, which includes references to autonomous vehicles as vehicles that drive themselves, 9 TTABVUE 12, and have considered the definition for whatever probative value it may have.

## **II. Analysis of Likelihood of Confusion Refusal**

Section 2(d) of the Trademark Act “prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception.” *In re Embiid*, 2021 USPQ2d 577, at \*9 (TTAB 2021) (citing 15 U.S.C. § 1052(d)). Our determination of the likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). “We consider each *DuPont* factor for which there

is evidence and argument.” *Embiid*, 2021 USPQ2d 577, at \*9-10 (citing *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019)).

“Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because the ‘fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.’” *Id.*, at \*10 (quoting *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)). Applicant addresses these two key factors, 6 TTABVUE 7-13, as well as the sixth *DuPont* factor, the “number and nature of similar marks in use on similar goods [or services].” *DuPont*, 177 USPQ at 567. 6 TTABVUE 13-15.

**A. The Number and Nature of Similar Marks in Use on Similar Services**

We begin with the sixth *DuPont* factor because it potentially bears on the scope of protection to be accorded to the cited mark and the degree of similarity between the marks required for confusion to be likely.

“The sixth *DuPont* factor ‘considers [t]he number and nature of similar marks in use on similar goods’” or services. *Embiid*, 2021 USPQ2d 577, at \*33 (quoting *Omaha Steaks Int’l Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018)). “The Federal Circuit has held that evidence of the extensive registration and use of a term by others can be powerful evidence of the term’s weakness.” *Id.* (quoting *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017) (citing *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. v. Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir.

2015) and *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)).

The purpose of introducing evidence of third-party use is “to show that customers have become so conditioned by a plethora of such similar marks that customers ‘have been educated to distinguish between different [such] marks on the bases of minute distinctions.’” *Omaha Steaks*, 128 USPQ2d at 1693 (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)).

“Third-party registration evidence . . . may have some probative value . . . because it ‘may bear on conceptual weakness if a term is commonly registered for similar goods and services.’” *Embiid*, 2021 USPQ2d 577, at \*34 (quoting *Tao Licensing*, 125 USPQ2d at 1057). Active third-party registrations may be relevant to show that a mark, or a portion of a mark, is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017); *Jack Wolfskin*, 116 USPQ2d at 1136; *Juice Generation*, 115 USPQ2d at 1674-75.

Applicant argues that the “phrase ‘ground truth’ is frequently used in connection with blogs, other educational services and resources, as well as consulting-related services, and is commonly encountered by consumers.” 6 TTABVUE 13. According to Applicant, “the mark GROUND TRUTH has a widely understood suggestive meaning in connection with such services, is weak in the context, and each mark is entitled to

a relatively narrow ambit of protection.” *Id.* Applicant further argues that “GROUND TRUTH is commonly used in connection with blogs and other educational or informational resources, due to the various meanings and connotations of ‘ground truth’ related to the search for some truth through research and collecting and disseminating information,” and that it “has made of record evidence of both third-party registrations and third-party common law use of GROUND TRUTH that demonstrates this commonly understood meaning.” *Id.* at 14.

Applicant also argues that the cited mark “coexists on the Principal Register with several other GROUND TRUTH marks for highly related services.” *Id.* Applicant “points in particular to Registration No. 4,524,259 for GROUNDTRUTH for ‘on-line journals, namely[,] blogs featuring issues in the fields of freedom of expression, international social justice, human rights, emerging democracies, the environment, religious affairs, and global health’ among others in Class 41,” and “Registration No. 4,741,601 for GROUND TRUTH for ‘providing a website featuring reviews on humanitarian service providers for non-commercial purposes; social research and consultation services, namely, conducting stakeholder research and consulting the fields of humanitarian action, namely, collecting constituent feedback and providing reports, advice, and technical assistance to transform feedback into improved humanitarian outcomes’ in Class 35.” *Id.*

Applicant submits

that such coexistence (in addition to the coexistence with the 11 other marks and registrations submitted in Exhibits D and E attached to the March 25, 2020 Office action response) is evidence that the mark GROUND TRUTH is

weak, consumers understand the common meaning of the mark in the context of the services, and consumers are able to distinguish the source of the services *even for identical marks* and the related services of the third parties in this context. In this context, each mark is given a narrow scope of protection.

*Id.* at 14-15 (emphasis in original, citation omitted).

The Examining Attorney responds that the “Board should find this argument unpersuasive because these registrations appear to be for goods and/or services that are predominantly different from or unrelated to those identified in applicant’s application.” 8 TTABVUE 6. With respect to the two registrations highlighted by Applicant, the Examining Attorney argues that “evidence comprising only a small number of third-party registrations for similar marks with similar goods and/or services, is generally entitled to little weight in determining the strength of a mark.” *Id.* at 7. According to the Examining Attorney, Applicant “has not provided evidence to support a finding of relatedness with respect to U.S. Registration No. 4741601” and this registration “like most of the third-party registrations highlighted by applicant, have no bearing on the strength of the wording, ‘GROUND TRUTH’ because these registrations identify different and unrelated services.” *Id.* With respect to Applicant’s third-party uses, the Examining Attorney argues that “this evidence shows a small number of third-parties using the relevant wording in connection with different or unrelated services.” *Id.* at 8.

In its reply brief, Applicant appears to limit its argument to the conceptual weakness of the cited GROUND TRUTH mark, as Applicant argues that its evidence “demonstrates its suggestive meaning in the context of blog services or providing

other online information.” 9 TTABVUE 6. Applicant concludes that “[c]onfusion is not likely to result from the use of the suggestive marks in the context, as consumers are able to understand the suggestive nature of the marks, and distinguish between the source [sic] of the distinct services.” *Id.*

We turn first to Applicant’s registration evidence. In addition to the two third-party registrations discussed above, Applicant made of record three third-party registrations of GROUNDTRUTH for various goods in Classes 9, 18, and 25, online and wholesale retail store services in Class 35, and design and design consultancy services in Class 42;<sup>12</sup> for various business management consulting, advertising, marketing, and promotional services in Class 35;<sup>13</sup> and for strategic consulting, data analytics, and consumer marketing research services.<sup>14</sup> The five third-party registrations have “varying probative value.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 F. Appx. 516 (Fed. Cir. 2019).

The registration of GROUNDTRUTH for “on-line journals, namely, blogs featuring issues in the fields of freedom of expression, international social justice, human rights, emerging democracies, the environment, religious affairs, and global health” covers services that appear to be encompassed within the broad identification of services in the cited registration, and the registration of GROUND TRUTH for “providing a website featuring reviews on humanitarian service providers for non-

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<sup>12</sup> August 25, 2020 Response to Office Action at TSDR 32-35 (Registration No. 5876307).

<sup>13</sup> *Id.* at TSDR 36-38 (Registration No. 5671601). This registration and Registration No. 3864937 discussed below have a common owner.

<sup>14</sup> *Id.* at TSDR 45-47 (Registration No. 3864937).

commercial purposes; social research and consultation services, namely, conducting stakeholder research and consulting the fields of humanitarian action, namely, collecting constituent feedback and providing reports, advice, and technical assistance to transform feedback into improved humanitarian outcomes” covers services that appear to be related in subject matter to the services identified in the cited registration. These two registrations have some probative value regarding the conceptual weakness of the cited mark.

The goods and services identified in the three other registrations, however, have not been shown to be encompassed within, or otherwise related to, the services identified in the cited registration, and they have no probative value regarding the conceptual strength of the cited mark. *See i.am.symbolic*, 123 USPQ2d at 1751 (“Symbolic has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes, *e.g.*, its class 25 registration for clothing, support a finding that registrants’ marks are weak with respect to the goods identified in their registrations.”); *Inn at St. John’s*, 126 USPQ2d at 1746.

We turn next to Applicant’s third-party use evidence. Applicant made of record Internet webpages of The Groundtruth Project blog regarding journalism,<sup>15</sup> a “GroundTruth Blog” regarding the use of pesticides, which appears on the Pesticide

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<sup>15</sup> *Id.* at TSDR 49-50.

Action Network at panna.org,<sup>16</sup> a “GroundTruth” blog regarding digital marketing,<sup>17</sup> a “Ground Truth Trekking” website regarding outdoor expeditions,<sup>18</sup> webpages entitled “Ground Truth” from the website of Forrest Service Employees for Environmental Ethics regarding wilderness protection,<sup>19</sup> and a website entitled “Ground Truth Solutions,”<sup>20</sup> whose stated mission is “to ensure that people affected by crisis have a say in humanitarian action, from individual projects to global humanitarian reform.”<sup>21</sup>

Applicant’s third-party use evidence has little probative value regarding the commercial weakness of the cited mark. Only a few the websites involve “On-line journals, namely, blogs featuring information” in various fields, and “without evidence as to the extent of [these] third-party use[s], such as how long the websites have been operational or the extent of public exposure to the sites, the probative value of this evidence is minimal.” *In re Thomas*, 79 USPQ2d 1021, 1026 (TTAB 2006) (citing *Palm Bay Imps.*, 73 USPQ2d at 1693).

Applicant’s probative third-party use and registration evidence boils down to two pertinent registrations and a handful of uses of GROUND TRUTH marks for blogs with no showing of the extent or duration of exposure of the websites to the

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<sup>16</sup> *Id.* at TSDR 51-55.

<sup>17</sup> *Id.* at TSDR 56-63.

<sup>18</sup> *Id.* at TSDR 64-65. The website has a link to a blog.

<sup>19</sup> *Id.* at TSDR 66-68.

<sup>20</sup> *Id.* at TSDR 69-72.

<sup>21</sup> *Id.* at TSDR 70.

purchasing public. This “falls short of the ‘ubiquitous’ or ‘considerable’ use of the mark components present” in *Jack Wolfskin* and *Juice Generation. i.am.symbolic*, 123 USPQ2d at 1751.<sup>22</sup> See also *Inn at St. John’s*, 126 USPQ2d at 1746 (“four third-party registrations of varying probative value” found to be “a far cry from the large quantum of evidence of third-party use and registrations that was held to be significant in both” *Jack Wolfskin* and *Juice Generation.*).

The cited registration issued on the Principal Register without a showing of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), and it is thus presumed to be inherently distinctive for the identified services. *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006). On this record, the cited mark cannot be viewed as either conceptually or commercially weak, and we thus accord it the “normal scope of protection to which inherently distinctive marks are entitled.” *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017). The sixth *DuPont* factor is neutral in our analysis of the likelihood of confusion.

## **B. Similarity or Dissimilarity of the Services and Channels of Trade**

The second *DuPont* factor “considers [t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting

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<sup>22</sup> “[I]n *Juice Generation*, there were at least twenty-six relevant third-party uses or registrations of record . . . and in *Jack Wolfskin*, there were at least fourteen.” *In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1746 n.8 (TTAB 2016).

*DuPont*, 177 USPQ at 567), while the third *DuPont* factor “considers ‘[t]he similarity or dissimilarity of established, likely-to-continue trade channels.’” *Id.* at 1052 (quoting *DuPont*, 177 USPQ at 567).

### 1. Similarity or Dissimilarity of the Services

The involved “services need not be identical or even competitive to find a likelihood of confusion.” *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at \*4 (TTAB 2019) (citing *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000)). “They need only be ‘related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the services] emanate from the same source.’” *Id.* (quoting *Coach Servs.*, 101 USPQ2d at 1721 (internal quotation omitted)).

“We begin with the identifications of . . . services in the registration and application under consideration.” *Id.*, at \*5. The services identified in the cited registration are “On-line journals, namely, blogs featuring information written by and for members of local communities around the globe,” while the services identified in the application are “On-line journals, namely, blogs featuring autonomous vehicle technology.” Both sets of services involve “On-line journals, namely, blogs featuring” certain subject matter, but Applicant and the Examining Attorney disagree about the scope of the language in the identification of services in the cited registration.

Applicant argues that “[w]hile each identification includes ‘on-line journals, namely blogs,’ each on-line journal/blog has distinct, nonoverlapping content and is directed towards a unique audience, as indicated in the identification itself.” 6

TTABVUE 7. According to Applicant, “Applicant’s and Registrant’s respective identification[s] of services properly restrict the nature and type of services provided by each. With these restrictions, the types of services are distinguished, as are the respective channels of trade and class of prospective purchasers or consumers.” *Id.* at 8.

With respect to the services identified in the cited registration, “On-line journals, namely, blogs featuring information written by and for members of local communities around the globe,” Applicant argues that “Registrant’s services potentially could be interpreted as encompassing any topic, as if the identification of services read simply ‘on-line journals, namely blogs,’” but that “the limitation of services in the identification does have meaning and significance for understanding the services and trade channels through which the services are offered.” *Id.* Applicant cites *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399 (TTAB 2010), for the proposition that “[e]xtrinsic evidence can be used to establish or understand the meaning of the goods or services offered in the identification.” *Id.* Applicant then proceeds to discuss extrinsic evidence of the nature of Registrant’s actual blog offered under the cited mark. *Id.* at 9-10.

Applicant concludes as follows:

Based on the information regarding the distinct nature and meaning of the services as identified in the respective application and Registration, Applicant submits that the services are unique, distinct, and directed towards different audiences for different purposes. Therefore, the prospective purchasers and trade channels are distinct, and consumers are not likely to assume that the services emanate from the same source.

*Id.* at 10.

The Examining Attorney responds that the cited registration “uses broad wording to describe ‘On-line journals, namely, blogs featuring information written by and for members of local communities around the globe’, which presumably overlaps all goods and/or services of the type described, including applicant’s, ‘On-line journals, namely, blogs featuring autonomous vehicle technology.’” 8 TTABVUE 9 (citations omitted). She argues that “applicant’s and registrant’s overlapping services are substantially related because the identification in the cited registration features ‘information written by and for’ members of communities around the world” and “does not specify the subject matter of such ‘information’ and thus such ‘information’ would include information about autonomous vehicle.” *Id.* at 9-10. She rejects Applicant’s argument based on extrinsic evidence from Registrant’s website because “it seeks to read in self-serving limitations not present in the registration,” *id.* at 10, and argues that when the identification in the cited registration is “properly read and free from self-serving limitations, the registration’s use of the term ‘information’ is incredibly broad and is not bound by a limitation of field or subject matter.” *Id.* at 11. She hypothesizes “a community comprised of sophisticated and unsophisticated individuals alike, located in an area that is home to a number of employees from an autonomous care manufacture [sic]” that “would be likely to use registrant’s blog services for information about autonomous vehicles.” *Id.*

We agree with the Examining Attorney that Applicant improperly relies on extrinsic evidence to limit the scope of the services identified in the cited registration.

The *Edwards Lifesciences* case cited by Applicant in support of its use of extrinsic evidence is readily distinguishable. In that case, the applicant's identification of goods read as follows: "Near real-time computer monitoring system comprised of a software application and database that anticipates and detects possible adverse drug events, and alerts healthcare providers to adverse drug events." *Edwards Lifesciences*, 94 USPQ2d at 1401. The Board accepted extrinsic evidence offered by the applicant to "demonstrate the meaning of its description of goods, not to restrict or limit the goods," because the identification "provides basic information, and the goods are of a technical nature," making it "entirely appropriate to consider extrinsic evidence to determine the specific meaning of the description of goods." *Id.* at 1410. The Board cited its decision in *In re Trackmobile, Inc.*, 15 USPQ2d 1152 (TTAB 1990), *id.*, in which the Board held that extrinsic evidence was properly used to interpret the identification of goods "light railway motor tractors" in the cited registration.

The Board has held, however, that "*Trackmobile* does not stand for the proposition that when the goods or services identified in the cited registration are described broadly, the Board may or should consider extrinsic evidence as to the nature of the registrant's actual goods or services when making its likelihood of confusion determination." *In re Cont'l Graphics Corp.*, 52 USPQ2d 1374, 1376 (TTAB 1999). The Board held in *Cont'l Graphics* that "that proposition is directly contrary to the rule, expressly reiterated by the Board in *Trackmobile*, that the likelihood of confusion determination must be made on the basis of the goods or services as identified in the application and the registration, rather than on the basis of what the

evidence might show the applicant's or registrant's actual goods or services to be." *Id.* (citing *Trackmobile*, 15 USPQ2d at 1153). The Board further explained in *Cont'l Graphics* that when the Board "considered the applicant's extrinsic evidence regarding the registrant's goods in *Trackmobile*, it was not because the registrant's goods were identified broadly in the registration, but because the Board was uncertain as to what the goods identified in the registration were," and that "the Board did not consider the extrinsic evidence in order to determine the nature of the registrant's particular 'light railway motor tractors,' but rather to determine what 'light railway motor tractors' were, in general." *Id.*

The Board concluded in *Cont'l Graphics* that

no extrinsic evidence is necessary in order to educate the Board as to what "printing services" are; the term, although broad, is neither vague nor uncertain. Accordingly, applicant's reliance on *Trackmobile* is misplaced, and applicant's proffered extrinsic evidence regarding the nature and scope of the services actually rendered by the registrant is irrelevant and can be given no consideration.

*Id.* at 1376-77.

The Board has continued to limit the application of *Trackmobile* to cases in which "the registrant's identification of goods [or services] is so vague that we need extrinsic evidence to determine if a term has a specific meaning in the trade." *In re RSI Sys., LLC*, 88 USPQ2d 1445, 1449 (TTAB 2008) (extrinsic evidence regarding the term "printing machines" not considered because "printing machines" was "not a term like 'light railway motor tractors'" in *Trackmobile* or "so broad as to be virtually meaningless"). *See also In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1500 n.3 (TTAB

2010) (services identified in the cited registration as “technical support services namely, troubleshooting of electronic communications computer hardware and software problems by telephone, by e-mail, by fax and on-site; installation, maintenance and updating of electronic communications computer software” held not to be “so vague as to require clarification” under *Trackmobile*).

We hold that the identification of services in the cited registration, “On-line journals, namely, blogs featuring information written by and for members of local communities around the globe,” “although broad, is neither vague nor uncertain,” *Cont’l Graphics*, 52 USPQ2d at 1376, and that there is no need to resort to extrinsic evidence to interpret it in the course of our analysis under the second *DuPont* factor.

Where an “identification of services is broad, the Board ‘presume[s] that the services encompass all services of the type identified.” *Country Oven*, 2019 USPQ2d 443903, at \*4 (quoting *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015)). We agree with Applicant that “Registrant’s services potentially could be interpreted as encompassing any topic,” 6 TTABVUE 8, and with the Examining Attorney that “the registration’s use of the term ‘information’ is incredibly broad and is not bound by a limitation of field or subject matter,” 8 TTABVUE 11, but “we are obligated to decide this appeal on the basis of the registration that was issued.” *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1414 (TTAB 2018).<sup>23</sup> We “have no

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<sup>23</sup> Applicant could have addressed the breadth of the identification of services in the cited registration by obtaining a consent from Registrant or seeking a restriction of the registration under Section 18 of the Trademark Act, 15 U.S.C. § 1068, in an inter partes proceeding. *Solid State Design*, 125 USPQ2d at 1410 (citing *In re Cook Med. Tech. LLC*, 105 USPQ2d 1377, 1384 (TTAB 2012)). Applicant did not avail itself of these remedies.

authority to read any restrictions or limitations into the [R]egistrant's description of [services]," *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638 (TTAB 2009), and Applicant's "reliance on [R]egistrant's website in an attempt to restrict the scope of [R]egistrant's [services] is to no avail" because Applicant "may not restrict the scope of the [services] covered in the cited registration by argument or extrinsic evidence." *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 (TTAB 2008). Accordingly, Applicant's "proffered extrinsic evidence regarding the nature and scope of the services actually rendered by the [R]egistrant is irrelevant and can be given no consideration." *Cont'l Graphics*, 52 USPQ2d at 1377.

We hold that the "blogs featuring information written by and for members of local communities around the globe" identified in the cited registration encompass information "featuring autonomous vehicle technology" (self-driving cars),<sup>24</sup> and the services as identified are thus legally identical. *In re Integrated Embedded*, 120 USPQ2d 1504, 1514 (TTAB 2016) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1010 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Jump Designs, LLC*, 80 USPQ2d 1370,

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<sup>24</sup> As noted above, the Examining Attorney argues that the overlap involves "a community comprised of sophisticated and unsophisticated individuals alike, located in an area that is home to a number of employees from an autonomous care manufacture [sic]." 8 TTABVUE 11. "[I]n determining an ex parte appeal, the Board reviews the appealed decision of the examining attorney to determine if it was correctly made," and we "need not find that the examining attorney's rationale was correct in order to affirm the refusal to register, but may rely on a different rationale." *Embiid*, 2021 USPQ2d 577, at \*14 n.28 (quoting TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") Section 1217 & n.1). On the basis of the broad identification in the cited registration, we find that "blogs featuring autonomous vehicle technology" would provide "information written by and for members of local communities around the globe" regardless of the specific composition of the local communities.

1374 (TTAB 2006)). The second *DuPont* factor supports a finding of a likelihood of confusion.

## **2. Similarity or Dissimilarity of the Channels of Trade**

Because we have found that the services are legally identical, we must presume that they “travel through the same channels of trade and are offered or rendered to the same or overlapping classes of purchasers.” *In re Info. Builders Inc.*, 2020 USPQ2d 10444, at \*3 (TTAB 2020) (citing *Viterra*, 101 USPQ2d at 1908). “Thus, the third *DuPont* factor also weighs in favor of finding a likelihood of confusion.” *Id.*

## **C. Similarity or Dissimilarity of the Marks**

“Under the first *DuPont* factor, we consider ‘the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.’” *Embiid*, 2021 USPQ2d 577, at \*11 (quoting *Palm Bay Imps.*, 73 USPQ2d at 1691). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Id.* (quoting *Inn at St. John’s*, 126 USPQ2d at 1746 (quoting *In re Davia*, 110 USPQ2d 1801, 1812 (TTAB 2014))).

“The proper test regarding similarity ‘is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.’” *Id.* (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (internal quotation omitted)). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than a specific impression of marks.”

*Id.* (quoting *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630 (TTAB 2018)). The average customer here is a reader of blogs.

Because the services are legally identical, the degree of similarity between the marks required for confusion to be likely declines. *See, e.g., Bridgestone Americas Tire Operations LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012) (“When the goods are identical, the appearance of a mark of similar sound, appearance, or connotation is more likely to cause confusion than if the goods are significantly different.”); *Coach Servs.*, 101 USPQ2d at 1722; *Century 21 Real Estate Corp., v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Applicant’s standard character mark GROUND TRUTH and the cited standard character mark GROUNDTRUTH are “phonetically identical and visually almost identical.” *Stockpot, Inc. v. Stock Pot Rest., Inc.*, 220 USPQ 52, 54 (TTAB 1083), *aff’d*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984). *See also Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016) (MINI MELTS found to be “essentially identical” to MINIMELTS and MINI-MELTS). “This fact is significant to the similarity inquiry.” *Coach Servs.*, 101 USPQ2d at 1721.

Applicant claims, however, that the marks, “despite sharing common elements, have distinct commercial impressions due [to] the differences in meaning and connotation of the marks in connection with their respective services.” 6 TTABVUE 10. Applicant argues that “[e]ven when the marks at issue are identical, or nearly identical, the Board has found that differences in connotation can outweigh visual and phonetic similarity.” *Id.* at 10-11 (quoting *Coach Servs.*, 101 USPQ2d at 1721

and citing *Blue Man Prods., Inc. v. Tarmann*, 75 USPQ2d 1811 (TTAB 2005) and *In re Sears, Roebuck & Co.*, 2 USPQ2d 1312 (TTAB 1987)).

According to Applicant, “‘Ground Truth’ has distinct meanings in connection with the services of the Application and the services of the Cited Registration.” *Id.* at 11. Applicant argues that it “has made of record a definition of ‘ground truth’ and its commonly understood meanings,” and that the “explanation of ‘ground truth’ demonstrates that the phrase has different meanings depending on the context in which it is used.” *Id.*<sup>25</sup>

Applicant argues that its autonomous vehicle technology blog services “involve artificial intelligence and machine learning,” *id.* at 11, which Applicant characterizes as being in “the field of statistics and machine learning.” *Id.* at 12. Applicant cites the Wikipedia entry in support of its argument that in that field, “ground truth” “is a conceptual term relative to the knowledge of truth concerning a specific question.” *Id.* Applicant claims that “[i]t is the ideal expected result” and that “[t]his is used in statistical models to prove or disprove research hypotheses.” *Id.* (emphasis supplied by Applicant). Applicant concludes that “in the context of Applicant’s services, the mark GROUND TRUTH is suggestive of the machine learning that occurs in training the autonomous vehicles to drive themselves using data, and the ideal expected result to be obtained from ‘ground truthing’ in statistical models.” *Id.*

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<sup>25</sup> The definition of “Ground Truth” to which Applicant refers is from a Wikipedia entry entitled “Ground Truth,” which states that “Ground truth is a term used in various fields to refer to information provided by direct observation (i.e. empirical evidence) as opposed to information provided by inference.” August 25, 2020 Response to Office Action at TSDR 27.

Applicant claims that the services identified in the cited registration “are directed towards cooperative community development topics,” and that “[a]s shown in the marketing of Registrant’s services, Registrant uses mapping ‘for greater influence and representation in development and democracy.’” *Id.* Once again citing Wikipedia, Applicant argues that “[i]n connection with mapping and geographical information systems (GIS), ‘ground truth’ has a different meaning than in connection with machine learning and statistics,” and that “[i]n this context, ‘ground truth’ refers to the real-world data collected on location that allows cartographers and others that analyze satellite imagery [to] verify the accuracy of the information in the digital images.” *Id.* According to Applicant, “[e]ven without the mapping references, this meaning of ground truth in connection with blogs featuring information written by and for members of local communities around the globe has” the “connotation of finding information within a community and using it to inform other communities, analogous to how real-world data is used to inform GIS systems and other mapping techniques.” *Id.* Applicant concludes that the “differences in commercial impression outweigh the similarity in appearance or pronunciation and obviate any likelihood of confusion as to the source of the services rendered under the respective marks.” *Id.* at 13.

The Examining Attorney responds that “registrant’s services have no limitation as to the field of the information provided by the services. As such, the parties’ services overlap. Therefore, the applied for mark and the registered mark when

viewed in connection with identified services, have the same or a highly similar commercial impression.” 8 TTABVUE 6.

We agree with the Examining Attorney, as we have found above that the services are legally identical. Applicant is correct that the Board and the Federal Circuit have held that marks that are identical or very similar in appearance and sound may be sufficiently different in meaning to make confusion unlikely, but the cases that Applicant cites for that proposition do not support Applicant’s claim on the record here.

In *Coach Servs.*, the Federal Circuit found that the Board had correctly determined that COACH for educational materials used to prepare students for standardized tests was not confusingly similar to COACH for various luxury goods such as handbags, luggage, and clothing. The Board had found that “‘Opposer’s COACH mark, when applied to fashion accessories, is clearly either arbitrary or suggestive of carriage or travel accommodations (e.g., stagecoach, train, motor coach, etc.),” while “‘applicant’s COACH marks call to mind a tutor who prepares a student for an examination.” *Coach Servs.*, 101 USPQ2d at 1369 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 96 USPQ2d 1600, 1609 (TTAB 2011)). The court “agree[d] with the Board that, despite their undisputed similarity, the marks have different meanings and create distinct commercial impressions,” particularly “given that the word ‘coach’ is a common English word that has many different definitions in different contexts,” *id.*, and that “these distinct commercial impressions out-weigh

the similarities in sound and appearance, particularly since . . . the parties' goods are unrelated." *Id.*

Here, the services are legally identical, not unrelated, and the record does not show that the phrase "ground truth" is a common phrase in English that has the sort of dictionary-recognized "different definitions in different contexts" that common words such as "coach" have.

In *Blue Man Prods.*, the Board found that the opposer's mark BLUE MAN GROUP for entertainment services and collateral merchandise and the applicant's mark BLUEMAN for cigarettes were "very similar in appearance and pronunciation, differing essentially only in that opposer's mark has the additional word GROUP, and depicts BLUE MAN as two words rather than one." *Blue Man Prods.*, 75 USPQ2d at 1820. The Board found nevertheless that "the marks differ[ed] in their connotations and commercial impressions," *id.* at 1820-21, and that "these differences in the connotations and the commercial impressions of the marks . . . outweigh the visual and phonetic similarity" because when the opposer's mark BLUE MAN GROUP was viewed in connection with its entertainment services and sound recordings, "the mark obviously refers to these performers" and "each person in this group is a 'blue man,'" while "applicant's mark [had] no such connotation for cigarettes or tobacco." *Id.* at 1820. The Board concluded that "the differences in the goods, as well as the different commercial impressions engendered by the marks, are significant countervailing factors" to the fame of the opposer's mark. *Id.*

Here, the services are legally identical, not different, and the marks are also more similar to one another than those in *Blue Man Prods.*, as GROUND TRUTH and GROUNDTRUTH differ only by the presence of a space between the words GROUND and TRUTH in Applicant's mark, which does not meaningfully differentiate the marks, and there is no additional element in one of the marks, such as the word "GROUP" in *Blue Man Prods.*, which gives that mark a specific meaning in the context of the legally identical services.

Finally, in *Sears*, the Board found that CROSS-OVER for bras and CROSSOVER for ladies' sportswear had "different meanings when applied to the goods of applicant and registrant," such that the "two marks create different commercial impressions, notwithstanding the fact that they are legally identical in sound and appearance." *Sears*, 2 USPQ2d at 1314. The Board found that the goods were "undeniably related," although there was "a competitive distance between them" because "they are different types of clothing, having different uses, and are normally sold in different sections of department stores." *Id.* Against that backdrop, the Board found that "CROSS-OVER,' when applied to brassieres, is suggestive of the construction of the brassieres," while "Registrant's mark 'CROSSOVER' . . . conveys no such meaning when applied to ladies' sportswear" because "registrant's mark is likely to be perceived by purchasers either as an entirely arbitrary designation, or as being suggestive of sportswear which 'crosses over' the line between informal and more formal wear (i.e., is appropriate for either use), or the line between two seasons." *Id.*

Here, the services are legally identical, not at a competitive distance from one another, and the subtle differences in meaning discussed by the Board in *Sears* do not exist.

In the final analysis, there is no evidence that average readers of “blogs featuring information written by and for members of local communities around the globe” are steeped either in the technical lingo of “the field of statistics and machine learning,” 6 TTABVUE 12, such that they would understand Applicant’s claimed mark to be “a conceptual term relative to the knowledge of truth concerning a specific question” that “is used in statistical models to prove or disprove research hypotheses,” *id.*, or in the technical lingo of “mapping and geographical information systems (GIS),” such that they would understand GROUNDTRUTH to “refer[ ] to the real-world data collected on location that allows cartographers and others that analyze satellite imagery verify the accuracy of the information in the digital images.” *Id.*

Applicant “did not establish . . . that [GROUND TRUTH] when applied to [Applicant’s] [services] ‘brings to mind’ something different from [GROUNDTRUTH] when applied to [Registrant’s] mark[ ].” *Embiid*, 2021 USPQ2d 577, at \*21 (quoting *i.am.symbolic*, 123 USPQ2d at 1749 (quoting *Coach. Servs.*, 101 USPQ2d at 1721)). Because the marks are identical in sound, virtually identical in appearance, and have the same general connotation of “refer[ing] to information provided by direct observation (i.e. empirical evidence) as opposed to information provided by inference,”<sup>26</sup> the first *DuPont* factor supports a finding of a likelihood of confusion.

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<sup>26</sup> August 25, 2020 Response to Office Action at TSDR 27 (Wikipedia.org).

#### **D. Applicant's Coexistence Argument**

Applicant's argument of last resort, made in a separate section in its reply brief, is as follows:

The Examining Attorney argues that the services of the Registration are broad enough to encompass or overlap with the services of the Application. If the services of the Registration were in fact so broad and not limited as Applicant has argued, then they would certainly encompass the services of Registration No. 4,524,259 for the identical mark GROUNDTRUTH for "on-line journals, namely[,] blogs featuring issues in the fields of freedom of expression, international social justice, human rights, emerging democracies, the environment, religious affairs, and global health" (registered May 6, 2014) and No. 4,741,601 for GROUND TRUTH for "providing a website featuring reviews on humanitarian service providers for non-commercial purposes; social research and consultation services, namely, conducting stakeholder research and consulting the fields of humanitarian action, namely, collecting constituent feedback and providing reports, advice and technical assistance to transform feedback into improved humanitarian outcomes" (registered May 26, 2015). . . . The Cited Registration registered on March 18, 2014. These two third-party registrations were allowed to register subsequently to the Cited Registration, even though they both describe providing information and services that would also be of interest to members of local communities around the globe. Applicant respectfully submits that if the marks of the registrations listed in Exhibit D attached to Applicant's August 24, 2020 Office Action Response and the Cited Registration can coexist on the Principal Register, then Applicant's mark can also coexist on the Register.

9 TTABVUE 7 (internal citation omitted).

It is axiomatic that neither the Board nor the Examining Attorney is bound by registration decisions made by other examining attorneys on different records. *See, e.g., In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)

(“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”). The Board recently reiterated that “[w]hile we recognize that ‘consistency is highly desirable,’ . . . consistency in examination is not itself a substantive rule of trademark law, and a desire for consistency with the decisions of prior examining attorneys must yield to proper determinations under the Trademark Act and rules.” *In re Ala. Tourism Dep’t*, 2020 USPQ2d 10485, at \*11 (TTAB 2020) (quoting *In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1407 (TTAB 2018) (internal quotations and citations omitted)). In any event, “[w]e do not believe that our decision here is inconsistent with the registration of the third-party marks cited by Applicant, but to the extent that it is, it is the decision required under the statute on the record before us.” *Id.*

#### **E. Conclusion**

All of the pertinent *DuPont* factors support a finding of a likelihood of confusion. The GROUND TRUTH and GROUNDTRUTH marks border on the identical, the services, channels of trade, and classes of consumers are legally identical, and the cited mark has not been shown to be conceptually or commercially weak. Accordingly, we find that Applicant’s GROUND TRUTH mark so resembles the registered GROUNDTRUTH mark that it is likely to cause confusion when used in connection with the services identified in the application.

**Decision:** The refusal to register is affirmed.